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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/451,341 11/30/99 BURROUGHS

K TKMA.65581

EXAMINER

PM82/0713

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ROWAN, K
ART UNIT

PAPER NUMBER

3643
DATE MAILED:

16
07/13/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/451,341

Applicant(s)

BURROUGHS et al.

Examiner

Kurt Rowan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on May 1, 2001.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9, 11-19, and 21-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-19, and 21-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other: _____

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DETAILED ACTION

Drawings

1. This application has been filed with informal drawings which are acceptable for examination purposes only. Formal drawings will be required when the application is allowed.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second opposing ends of the sidewall section must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1- 9, 11-19, 21-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Splickan et al. in view of Hobson et al.

The patents to Splickan and Hobson show live well tanks for use on a boat to hold fish. Splickan shows a bottom, sidewalls 12-13 having first and second opposing ends. The bottom and the sidewall section define an interior compartment (not labeled). Splickan shows a top 29 coupled

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with the second end of the sidewall section and an overflow drain 22 coupled with the sidewall section of the tank near the bottom. The top forms an opening 36 for receiving a fish and a first surface 31 projecting inwardly from the peripheral edge to cover a portion of the interior compartment. Hobson shows a live well having a overflow drain 40 coupled to a sidewall section of the tank proximate the top. In reference to claims 1, 22, it would have been obvious to provide Splickan with a drain located near the top as shown by Hobson to replace the drain of Splickan since merely one drain is being substituted for another and the function is the same. In reference to claims 12, 24, 25, Splickan shows a baffle 39. In reference to claims 2, 13, Splickan shows the first surface 31 extending completely around the peripheral edge of the sidewall section and inwardly into the container with the first surface terminating at an inner edge defining said opening. In reference to claim 3, Splickan shows the peripheral edge and the opening as generally rectangular. In reference to claims 4, 14, 23, 27, it is not clear what orientation Splickan uses or if it matters in relation to the front side wall being directed in the direction of forward boat motion. Hobson mounts the well on the back of the boat as shown in Fig. 1 and couples the drain with the rear side wall. However, it would have been obvious to couple the drain with the front side wall since the function is the same. In reference to claims 5, 16, Splickan shows a baffle 39 coupled with the sidewall section between the bottom and the overflow drain with the baffle extending from the sidewall section inwardly into the interior compartment. In reference to claims 6, 17, Splickan shows the baffle extending completely around the sidewall section. In reference to claims 7, 15, Splickan shows the baffle including a

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lower generally planar surface at arrow 39 and an upper curved surface 40 noting Fig. 3. In reference to claims 8, 18, Splickan shows a second surface 26 coupled to the first surface 31. In reference to claims 9, 19, Splickan shows a sealing flange 30 upstanding from the first surface. In reference to claims 11, 21, Splickan shows a resilient collar 23 coupled with the sealing flange.

Response to Arguments

5. Applicant's arguments filed May 1, 2001 have been fully considered but they are not persuasive. Applicant's response overcomes the rejections under 35 USC 112, second paragraph. Applicant argues that the drain of Splickan *sic* (HOBSON) is used for circulating water and not as an overflow drain. This is partially true. Yes, tube 40 is used to circulate water, but it is also used as a drain since water flows out of the tube as shown by the arrows in the drawing Figs 1-2. Also see Hobson, column 3, lines 10-13. Hobson removes water which would cause an overflow and hence can be considered as an overflow drain. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art. The duct 39 of Splickan acts as a baffle since it will interfere will

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the flow of water inside the live well. Splickan shows a top 29 extending from the sidewall section to cover a portion of the compartment. Splickan shows the baffle coupled to the sidewall section by portion 31 of the top wall and clamping strip 26. In regard to the drain plug and its location. Both references show drains. The location of the drain as to the front wall of the well is a matter of design choice since the function is the same and no stated problem is solved. The claims should recite the invention more precisely to overcome the art of record.

Conclusion

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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7.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **KURT ROWAN** whose telephone number is (703) 308-2321.

The examiner can normally be reached on Monday-Thursday from 6:30 a.m. to 5:00 p.m.

The fax phone number for the organization where this application or proceeding is assigned is (703) 306-4195 or (703) 305-3597.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Kurt Rowan", written in a cursive style.

KURT ROWAN

PRIMARY EXAMINER

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July 9, 2001